

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In re</b>	)	Chapter 11
	)	
<b>W. R. GRACE &amp; CO., et al.</b>	)	Case No. 01-1139 (JKF)
	)	Jointly Administered
<b>Debtors.</b>	)	

**DEBTORS' MOTION TO STRIKE THE UNTIMELY DEPOSITION DESIGNATIONS  
OF ANDERSON MEMORIAL**

Pursuant to the Fourth Amended Case Management Order Related to the First Amended Joint Plan of Reorganization (the "Fourth Amended CMO") [Dkt. 22819], all parties were to submit deposition designations on August 14, 2009. On August 20, 2009, pursuant to the terms of the Fourth Amended CMO, the Plan Proponents filed their Objections and Counter-Designations to the Objecting Parties' and Arrowood Indemnity Company's Phase II Amended Deposition Designations [Dkt. 22903].

Anderson Memorial Hospital ("Anderson Memorial") filed its initial deposition designations late -- on August 24, 2009 [Dkt. 22948], instead of by the August 14 deadline set by the Fourth Amended CMO. The Plan Proponents objected and moved to strike these designations. See The Plan Proponents' Motion to Strike the Objections and Counter-Designations to the State of Montana's Amended Designations and Anderson Memorial's Untimely Designations [Dkt. 22995]. Now, on the eve of trial, Anderson Memorial has yet another batch of deposition designations -- these from the deposition of Dr. Thomas Florence. See Anderson Memorial Hospital's Supplemental Deposition Designation (typo in original), filed September 10, 2009 [Dkt. 23213].

Granted, Dr. Florence was not deposed until August 10, and therefore it may not have been possible for Anderson Memorial to file designations from his deposition by August 14. But

it certainly would have been possible for Anderson to file these designations along with the rest of their late-filed August 24 designations. There is no justification for Anderson to have waited a full month after Dr. Florence's deposition to file these designations.

The Debtors therefore hereby object and move to strike these designations.

### **General Objections**

Although the designations should be struck because they are extremely late, as a precaution the Debtors adopt and incorporate by reference, as applicable, each of the General Objections asserted and described in the Objections and Counter-Designations to the Objecting Parties' and Arrowood Indemnity Company's Phase II Amended Designations [Dkt. 22903].

### **Specific Objections**

Pursuant to the Fourth Amended CMO, the deadline for filing deposition designations was August 14, 2009. Anderson Memorial has failed to justify filing these deposition designations nearly one month after the deadline. The Debtors object to Anderson's designations as being untimely and violative of the Fourth Amended CMO.

Because Anderson Memorial's designations were not filed until September 10, 2009, the compiled designations that were submitted to the Court on August 25, 2009 do not contain Anderson Memorial's designations or the Plan Proponent's objections and counter-designations to such testimony. Should the Court deem Anderson Memorial's designations to be proper despite their untimeliness, the Debtors reserve the right to submit objections and counter-designations.

### **Reservation of Rights**

The Debtors reserve their rights to further object to the deposition designations referenced above, or any other proffered designations during the Phase II hearing, should they be proffered for any purpose that is not proper under the Fourth Amended CMO, the Federal Rules

of Evidence, the Federal Rules of Civil Procedure, and other applicable rules, statutes, and guidelines.

**Conclusion**

For the reasons explained above, the Debtors respectfully request that the Court enter an order that sustains the Debtors' objections to the above-referenced designations and strikes the use of this testimony in the Phase II Confirmation Hearing.

Dated: September 16 , 2009

Respectfully submitted,

KIRKLAND & ELLIS LLP

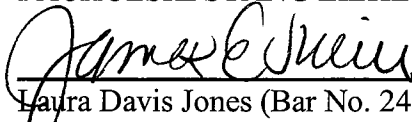
David M. Bernick, P.C.  
Theodore Freedman  
Lisa Esayan  
Justin S. Brooks  
Citigroup Center  
601 Lexington Ave.  
New York, New York 10022-4611  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

and

THE LAW OFFICES OF JANET S. BAER, P.C.  
Janet S. Baer, P.C.  
70 W. Madison St.  
Suite 2100  
Chicago, IL 60602  
Telephone: (312) 641-2162  
Facsimile: (312) 641-2165

and

PACHULSKI STANG ZIEHL & JONES LLP

A handwritten signature in cursive script, reading "James E. O'Neill", is written over a horizontal line.

Laura Davis Jones (Bar No. 2436)

James E. O'Neill (Bar No. 4042)

Kathleen P. Makowski (Bar No. 3648)

919 North Market Street, 17<sup>th</sup> Floor

P.O. Box 8705

Wilmington, Delaware 19899-8705 (Courier 19801)

Telephone: (302) 652-4100

Facsimile: (302) 652-4400

joneill@pszjlaw.com

kmakowski@pszjlaw.com

*Co-Counsel for the Debtors and Debtors in Possession*